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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/595,446	04/20/2006	Ralph Zochert	BINA.P004.US	9797				
42380 DORT PATENT, P.C. Box 26219 Crystal City Station Arlington, VA 22215	7590 08/07/2009		<table border="1"><tr><td>EXAMINER</td></tr><tr><td>OLSON, LARS A</td></tr></table>		EXAMINER	OLSON, LARS A		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/595,446

**Applicant(s)**

ZOCHERT, RALPH

**Examiner**

Lars A. Olson

**Art Unit**

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 26, 2009 has been entered.
2. An amendment was received from the applicant on May 26, 2009.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 recites the limitation "the tarpaulin cloth" in line 3. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 1 recites the limitation "the tarpaulin frame" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 2 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmichael (US 4,683,900) in view of Jaynes et al. (US 5,504,342).

Carmichael discloses a canopy for a boat, as shown in Figures 1-8, that is comprised of a tarpaulin cloth, defined as Part #20, which is supported by a tarpaulin frame having tubular frame members, defined as Parts #12 and 14, which are attachable to a boat, defined as Part #102, as shown in Figure 1. Said tarpaulin is further comprised of a pair of handles, defined as Parts #68 and 70, which are attached to forward and rearward ends of said tarpaulin, as shown in Figures 1 and 5.

Carmichael, as set forth above, discloses all of the features claimed except for the use of a handrail.

Jaynes et al. discloses a handrail for mounting on a rail of a boat, as shown in Figures 1-5, said handrail being comprised of a tubular handlebar, defined as Part #10, that is supported on either end by one of a pair of mounts, defined as Parts #18 and 18', each with a fastening arm having a screw thread that can be inserted through and into a surface in order to fasten and secure said handrail to said surface, as shown in Figure 2.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to utilize a handrail for attachment to a rail of a boat, as taught by Jaynes et al., in place of the handle attached to the tarpaulin of the canopy for a boat as disclosed by Carmichael, in order to provide a boat canopy with a handle means that is stronger and better secured to a support frame for said canopy.

#### ***Allowable Subject Matter***

9. Claims 3-6, 10 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brenaman (US 5,243,928) discloses a deck rack assembly for a kayak. Walker et al. (US 5,096,214) discloses a portable enclosure with a canopy and a handrail that is attached to a support frame of said canopy.

Art Unit: 3617

12. Any inquiry concerning this communication from the examiner should be directed to Exr. Lars Olson whose telephone number is (571) 272-6685.

lo

July 23, 2009

/Lars A. Olson/

Primary Examiner, Art Unit 3617